REMARKS

Claims 22-34, 39-40 and 42 are pending in this application, claims 35-38 and 41 having been presently cancelled.

Claims 22 and 40 have been amended in accord with the current rules in which underlining shows additions and strikethrough shows deletions. No other claims have been amended. No new matter has been added.

The examiner alleges lack of unit of invention under PCT Rule 13.1. Responsive to the restriction requirement set forth in the Office action, Applicants affirm election of the claims of group I, claims 22-44 wherein the additive is a polyethylene for examination. This election is made without traverse. Applicants have therefore limited claim 22 in order to more particularly point out and distinctly claim this aspect of their invention. Since claims 35-38 fail to further limit amended claim 22, they have been presently cancelled without prejudice to applicants' rights to file subsequent divisional applications to the non-elected subject matter. Inventorship is unchanged.

Applicants note with appreciation that claims 26, 27 and 39 are directed to allowable subject matter, but are objected to as being dependent upon a rejected base claim.

Claims 22-26, 28-36 and 38-42 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-40 of copending application number 10/089,850. Claims 22-26, 28-36 and 38-42 are also provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-40 of copending application number 10/089,853. The examiner points out in the middle of page 3 that a non-statutory double patenting rejection is a judicially created doctrine grounded in public policy. Its purpose is to prevent the unjustified or improper time-wise extension of the "right to exclude" granted by a patent by prohibiting the issuance of claims in a second patent that are not patentably distinct from the claims of a first patent.

As the examiner points out, a non-statutory double patenting rejection can be overcome with a terminal disclaimer. Terminal Disclaimers with respect to copending application numbers 10/089,850 and 10/089,853 accompany this amendment. Reconsideration and withdrawal of the obviousness-

type double patenting rejections of claims 22-26, 28-36 and 38-42 is respectfully solicited in light of said terminal disclaimer.

Claims 22-25, 28-36, 38 and 41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over EP 397 245. EP 397 245 is directed to perfume particles for use in cleaning and conditioning compositions. It is totally silent about any method for the antipilling treatment of textile fibre materials.

The examiner points to Example VII on page 20 of EP 397 245, and asserts that the composition is combined with the perfume particles of Example II, which comprise PE. However, in Example VII the composition is combined with the perfume particles of Example I, which comprise PE. But this composition comprises no polydimethylsiloxane.

The Example VIII composition on page 20, which comprises polydimethylsiloxane, is combined with the perfume particles of Example II, which do not comprise PE. The examiner asserts that the person of ordinary skill would expect the recited compositions to have properties similar to those exemplified "absent a showing to the contrary".

Responsive thereto, the examiner is respectfully requested to consider the enclosed Declaration by Mr. Mario Dubini, an expert in the field of textile dying, finishing, and care, especially of laundry processes. Said Declaration shows that the fabric treated with the inventive formulation comprising both a polydimethylsiloxane and PE shows a reduced propensity to pilling in comparison to the softeners of the prior art containing either component separately. The expert asserts that this behavior could not have been expected by a person having ordinary skill in the art.

Reconsideration and withdrawal of the rejection of claims 22-25, 28-36, 38 and 41 under 35 U.S.C. § 103(a) as being unpatentable over EP 397 245 is respectfully solicited in light of the Declaration and remarks *supra*.

Claims 22-25, 28-36, 38 and 40-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over EP 459 822 in view of EP 397 245. EP 397 245 has already been discussed. EP 459 822 is directed to fabric conditioning compositions containing compatible silicones. Said fabric conditioning compositions do not comprise PE. The examiner asserts that it would have been obvious to use the perfume particles of EP 397 245 which comprise PE in the fabric conditioning compositions containing compatible silicones of EP 459 822.

The examiner asserts that decreased pilling, while not disclosed, would follow from using the compositions in the disclosed manner. However, since both references are totally silent about any method for the antipilling treatment of textile fibre materials, the combination cannot make that suggestion.

This obviousness rejection appears to be based on hindsight, i.e. if the perfume particles of EP 397 245, which comprise PE, were used in the fabric conditioning compositions containing compatible silicones of EP 459 822, then it would be **inherent** that applicants' antiprilling results would be achieved. This equates inherency with obviousness, a clear legal error. See *In re Newell*, 13 USPQ2d (CAFC, 1990) and the many cases cited therein. All the chemical and physical properties of compositions, including their ability to achieve certain physical effects, are inherent in the compounds, but that does not make those properties obvious. According to 35 U.S.C. § 101, "Whoever discovers any new and useful process ... or composition of matter may obtain a patent therefor".

Reconsideration and withdrawal of the rejection of present claims 22-25, 28-34, 40 and 42 under 35 U.S.C. § 103(a) as being unpatentable over EP 459 822 in view of EP 397 245 is respectfully solicited in light of the remarks *supra*.

Claims 22-25, 28-36, 38 and 41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mooney, U.S. Patent No. 5,965,517. Mooney is directed to methods of treating fabrics with polycarboxylic acids to reduce creasing during wear or use. One aspect of this is a process for reducing the creasing of fabrics during wear, which comprises treating the fabrics with a rinse conditioner composition comprising 0.01 – 5 wt. % of polycarboxylic acids.

Some of the rinse conditioner composition examples (Table 2) contain either a silicone or PE. None contains both. The examiner again asserts that the person of ordinary skill would expect the recited compositions to have properties similar to those exemplified "absent a showing to the contrary". However applicants have already shown that the inventive compositions, comprising both a polydimethylsiloxane and PE, show a reduced propensity to pilling in comparison to the softeners of the prior art containing either component separately.

The examiner again also asserts that decreased pilling, while not disclosed, would follow from using the compositions in the disclosed manner. However, Mooney is totally silent about any method for the

antipilling treatment of textile fibre materials. Hence this assertion is based on hindsight for the reasons set forth *supra*. Equating inherency with obviousness is a clear legal error.

Reconsideration and withdrawal of the rejection of present claims 22-25 and 28-34 under 35 U.S.C. § 103(a) as being unpatentable over Mooney, U.S. Patent No. 5,965,517 is respectfully solicited in light of the remarks *supra*.

Since there are no other grounds of objection or rejection, passage of this application to issue with claims 22-34, 39-40 and 42 is earnestly solicited.

Applicants submit that the present application is in condition for allowance. In the event that minor amendments will further prosecution, Applicants request that the examiner contact the undersigned representative.

Respectfully submitted,

Kevin T. Mansfield

Ciba Specialty Chemicals Corporation
540 White Plains Road
Tarrytown, New York 10591
(914) 785-7127

Kevin T. Mansfield
Agent for Applicants
Reg. No. 31,635

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Enclosures: Petition for Extension of Time, 2 Terminal Disclaimers and Declaration